

does not by its *mandamus* deprive them of any of their discretionary power, but merely commands them to execute their duty, to render judgment, or to make answer as they may think proper, to the end that the individual may have an appeal, or prosecute his suit to a final decision, or obtain the relief he seeks. *Bac. Abr. tit. Mandamus, D.* Why should not an immediate power, to this extent, in the shape of an attachment against the person, be vested in every Court of justice, before which a public officer, or a body politic, may be called as a defendant? The important concerns of the public, or the rights of individuals, or of corporations, most certainly ought not to be suffered to be delayed, obstructed, or destroyed by the mere indolence, caprice, or perverseness of any one.

These difficulties and inconveniences are sufficient to shew, that a body politic ought not, in any case, to be made a defendant, unless it is indispensably necessary to do so. But there are instances, many of which have already occurred in this Court, and of which this suit affords an example, where, as the law now stands, *a corporation must be made a party to the suit, although it has, in truth, not the least concern with the **424** matter in dispute. Thus where the plaintiff claims a right to a sum of money deposited in a bank, or to certain shares of stock which stand on the books of the company in the name of the defendant who claims the deposit or the shares as his own, or as having an interest in it, or them, the body politic, it is held, must be made a party to prevent the deposit or the shares from being paid away, or transferred, before the right can be determined. This, with the vast concerns of the bank, the East India, and the South Sea Companies of England, had become an evil of such magnitude, that the Parliament of that country interposed, and declared by law, that in all such cases it should not be necessary to make them parties. 2 *Mad. Pri. Chan.* 191. But why should not a similar exemption be extended to all our joint stock companies; and a mere notice of the pending litigation be declared equivalent to making them parties for every purpose of preventing the parting with a deposit, or the transferring of the shares of its stock until the right to it was fully decided.

All these embarrassments and delays might be removed or prevented by a few very obvious and easy alterations in the course of procedure in suits where the State is required to be represented by its Attorney-General, and against corporations. Let it be declared, that on proof of the service of a copy of the bill upon the Attorney-General in any case where the State should appear as a defendant, he may be compelled to answer, but not on oath, by process of attachment as against other persons. That on a subpoena being returned served, the plaintiffs may obtain an attachment against corporators so summoned, or that the plaintiff may